

108TH CONGRESS  
1ST SESSION

# S. 1656

To address regulation of secondary mortgage market enterprises, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2003

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To address regulation of secondary mortgage market enterprises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Housing Enterprise Oversight Modernization  
6 Act of 2003”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND  
FREDDIE MAC

### Subtitle A—Improvement of Supervision

- Sec. 101. Establishment of Office of Federal Housing Enterprise Supervision in the Department of the Treasury.
- Sec. 102. Duties and authorities of Director and HUD.
- Sec. 103. Examiners and accountants.
- Sec. 104. Regulations.
- Sec. 105. Assessments.
- Sec. 106. Independence of Director in congressional testimony and recommendations.
- Sec. 107. Nonmortgage-related investments.
- Sec. 108. Reports.
- Sec. 109. Review of enterprises.
- Sec. 110. Risk-based capital test for enterprises.
- Sec. 111. Minimum and critical capital levels.
- Sec. 112. Required disclosures.
- Sec. 113. Federal Housing Finance Board.
- Sec. 114. Definitions.

### Subtitle B—Prompt Corrective Action

- Sec. 131. Capital classifications.
- Sec. 132. Supervisory actions applicable to undercapitalized enterprises.
- Sec. 133. Supervisory actions applicable to significantly undercapitalized enterprises.

### Subtitle C—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.

### Subtitle D—General Provisions

- Sec. 161. Conforming and technical amendments.
- Sec. 162. Effective date.

## TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

- Sec. 201. Abolishment of OFHEO.
- Sec. 202. Continuation and coordination of certain regulations.
- Sec. 203. Transfer and rights of employees of OFHEO.
- Sec. 204. Transfer of property and facilities.

1 **TITLE I—REFORM OF REGULA-**  
 2 **TION OF FANNIE MAE AND**  
 3 **FREDDIE MAC**

4 **Subtitle A—Improvement of**  
 5 **Supervision**

6 **SEC. 101. ESTABLISHMENT OF OFFICE OF FEDERAL HOUS-**  
 7 **ING ENTERPRISE SUPERVISION IN THE DE-**  
 8 **PARTMENT OF THE TREASURY.**

9 (a) IN GENERAL.—The Federal Housing Enterprises  
 10 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
 11 4501 et seq.) is amended by striking sections 1311 and  
 12 1312 and inserting the following:

13 **“SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL**  
 14 **HOUSING ENTERPRISE SUPERVISION.**

15 “(a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—There is established the  
 17 Office of Federal Housing Enterprise Supervision,  
 18 which shall be an office in the Department of the  
 19 Treasury.

20 “(2) AUTHORITY.—The Office shall succeed to  
 21 the authority of the Director of the Office of Federal  
 22 Housing Enterprise Oversight of the Department of  
 23 Housing and Urban Development and the general  
 24 regulatory and any other authority of the Secretary  
 25 of Housing and Urban Development with respect to

1 the enterprises (except as specifically provided other-  
 2 wise in this title, the Federal National Mortgage As-  
 3 sociation Charter Act (12 U.S.C. 1716 et seq.), the  
 4 Federal Home Loan Mortgage Corporation Act (12  
 5 U.S.C. 1451 et seq.), or any other provision of Fed-  
 6 eral law).

7 “(b) PROHIBITION OF MERGER OF OFFICE.—Not-  
 8 withstanding any other provision of law, the Secretary of  
 9 the Treasury may not merge or consolidate the Office, or  
 10 any of the functions or responsibilities of the Office, with  
 11 any function or program administered by the Secretary.

12 “(c) SAVINGS PROVISION.—The authority of the Di-  
 13 rector to take actions under subtitles B and C does not  
 14 in any way limit the general supervisory and regulatory  
 15 authority granted to the Director under subsection (a).

16 **“SEC. 1312. DIRECTOR.**

17 “(a) ESTABLISHMENT OF POSITION.—There is estab-  
 18 lished the position of the Director of the Office of Federal  
 19 Housing Enterprise Supervision, who shall be the head of  
 20 the Office.

21 “(b) APPOINTMENT; TERM.—

22 “(1) APPOINTMENT.—The Director shall be ap-  
 23 pointed by the President, by and with the advice and  
 24 consent of the Senate, from among individuals who  
 25 are citizens of the United States.

1           “(2) TERM.—The Director shall be appointed  
2           for a term of 5 years.

3           “(3) VACANCY.—

4                   “(A) IN GENERAL.—A vacancy in the posi-  
5                   tion of Director that occurs before the expira-  
6                   tion of the term for which a Director was ap-  
7                   pointed shall be filled in the manner established  
8                   under paragraph (1).

9                   “(B) TERM.—The Director appointed to  
10                  fill a vacancy under subparagraph (A) shall be  
11                  appointed only for the remainder of such term.

12           “(4) SERVICE AFTER END OF TERM.—An indi-  
13           vidual may serve as Director after the expiration of  
14           the term for which the individual was appointed  
15           until a successor has been appointed.

16           “(5) TRANSITIONAL PROVISION.—Notwith-  
17           standing paragraphs (1) and (2), the Director of the  
18           Office of Federal Housing Enterprise Oversight of  
19           the Department of Housing and Urban Development  
20           on the date of enactment of the Federal Housing  
21           Enterprise Oversight Modernization Act of 2003,  
22           shall serve as the Director until not later than 1  
23           year after the date of enactment of that Act.

24           “(c) PROHIBITION ON FINANCIAL INTERESTS.—The  
25           Director shall not have a direct or indirect financial inter-

1 est in any enterprise, nor hold any office, position, or em-  
 2 ployment in any enterprise.”.

3 (b) APPOINTMENT OF DIRECTOR.—Notwithstanding  
 4 the effective date under section 162, or any other provision  
 5 of law, the President may, at any time after the date of  
 6 enactment of this Act, appoint an individual to serve as  
 7 the Director of the Office of Federal Housing Enterprise  
 8 Supervision, as established under this Act, in accordance  
 9 with section 1312 of the Federal Housing Enterprises Fi-  
 10 nancial Safety and Soundness Act of 1992, as amended  
 11 by subsection (a) of this section.

12 **SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR AND**  
 13 **HUD.**

14 (a) IN GENERAL.—Section 1313 of the Housing and  
 15 Community Development Act of 1992 (12 U.S.C. 4513)  
 16 is amended to read as follows:

17 **“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.**

18 “(a) DUTIES.—

19 “(1) PRINCIPAL DUTIES.—The principal duties  
 20 of the Director shall be to ensure that the enter-  
 21 prises—

22 “(A) operate in a financially safe and  
 23 sound manner;

24 “(B) carry out their missions in a finan-  
 25 cially safe and sound manner, and only through

1 activities that have been authorized under, and  
2 are consistent with the purposes of, the provi-  
3 sions of the Federal National Mortgage Asso-  
4 ciation Charter Act (12 U.S.C. 1716 et seq.),  
5 and the Federal Home Loan Mortgage Cor-  
6 poration Act (12 U.S.C. 1451 et seq.), as appli-  
7 cable; and

8 “(C) remain adequately capitalized.

9 “(2) OTHER DUTIES.—To the extent consistent  
10 with paragraph (1), the Director shall exercise gen-  
11 eral supervisory and regulatory authority over the  
12 enterprises, in accordance with this title, the Federal  
13 National Mortgage Association Charter Act (12  
14 U.S.C. 1716 et seq.), the Federal Home Loan Mort-  
15 gage Corporation Act (12 U.S.C. 1451 et seq.), and  
16 any other applicable provision of law.

17 “(b) AUTHORITY EXCLUSIVE OF SECRETARY.—Ex-  
18 cept as specifically provided under this title, the Federal  
19 National Mortgage Association Charter Act, the Federal  
20 Home Loan Mortgage Corporation Act, or any other pro-  
21 vision of Federal law, the authority of the Director with  
22 respect to the enterprises shall not be subject to the re-  
23 view, approval, or intervention of the Secretary of the  
24 Treasury.

1       “(c) DELEGATION OF AUTHORITY.—The Director  
 2 may delegate to officers and employees of the Office any  
 3 of the functions, powers, and duties of the Director, with  
 4 respect to supervision and regulation of the enterprises,  
 5 as the Director considers appropriate.”.

6       (b) PRIOR APPROVAL AUTHORITY FOR NEW PRO-  
 7 GRAMS.—Part 1 of Subtitle A of the Federal Housing En-  
 8 terprises Financial Safety and Soundness Act of 1992 (12  
 9 U.S.C. 4501 et seq.) is amended by adding at the end  
 10 the following:

11       **“SEC. 1319H. PRIOR APPROVAL AUTHORITY FOR NEW PRO-**  
 12                               **GRAMS.**

13       “(a) IN GENERAL.—The Director, in consultation  
 14 with the Secretary of Housing and Urban Development,  
 15 shall require each enterprise to obtain the approval of the  
 16 Director, in the manner prescribed by regulation of the  
 17 Director, for any new program of the enterprise before im-  
 18 plementing the program.

19       “(b) STANDARD FOR APPROVAL.—The Director shall  
 20 approve any new program of an enterprise for purposes  
 21 of subsection (a), unless—

22               “(1) in the case of a new program of the Fed-  
 23 eral National Mortgage Association, the Director de-  
 24 termines that the program is not authorized under  
 25 section 304 or paragraph (2), (3), (4), or (5) of sec-



tion 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b));

“(2) in the case of a new program of the Federal Home Loan Mortgage Corporation, the Director determines that the program is not authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.); or

“(3) the Director determines that the new program is inconsistent with or undermines the safe and sound operation of the enterprise, consistent with section 1313(a)(1).

“(c) PROCEDURE FOR APPROVAL.—

“(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a new program under this section that describes the program in such form as prescribed by regulation of the Director.

“(2) RESPONSE.—

“(A) IN GENERAL.—Not later than 45 days after the date of submission of a request for approval under paragraph (1), the Director shall—

“(i) approve the request; or

1                   “(ii) deny the request and submit a  
2                   report explaining the reasons for the denial  
3                   to the Committee on Financial Services of  
4                   the House of Representatives and the  
5                   Committee on Banking, Housing, and  
6                   Urban Affairs of the Senate.

7                   “(B) EXTENSION.—The Director may ex-  
8                   tend the time period under subparagraph (A)  
9                   for a single additional 15-day period only if the  
10                  Director requests additional information from  
11                  the enterprise.

12                  “(3) FAILURE TO RESPOND.—If the Director  
13                  fails to approve a request for approval under this  
14                  section, or fails to submit a report under paragraph  
15                  (2)(A)(ii) during the period provided, the request  
16                  shall be considered to have been approved by the Di-  
17                  rector.

18                  “(4) REVIEW OF DISAPPROVAL.—

19                         “(A) SUBMISSION OF NEW INFORMA-  
20                         TION.—If the Director submits a report under  
21                         paragraph (2)(A)(ii) denying a request for rea-  
22                         sons listed under paragraph (1) or (2) of sub-  
23                         section (b), the Director shall provide the enter-  
24                         prise submitting the request with a timely op-

1           portunity to review and supplement the admin-  
2           istrative record.

3           “(B) NEW PROGRAMS NOT IN THE PUBLIC  
4           INTEREST.—If the Director submits a report  
5           under paragraph (2)(A)(ii) denying a request  
6           after finding that the program is inconsistent  
7           with or undermines the safe and sound oper-  
8           ation of the enterprise, as described in sub-  
9           section (b)(3), the Director shall provide the en-  
10          terprise with notice and opportunity for a hear-  
11          ing on the record regarding such denial.”.

12          (c) REPEAL OF HUD AUTHORITY.—Part 2 of sub-  
13          title A of title XIII of the Housing and Community Devel-  
14          opment Act of 1992 (12 U.S.C. 4501 et seq.) is amended  
15          by striking sections 1321 and 1322.

16          (d) AUTHORITY OF HUD FOR HOUSING GOALS.—

17                  (1) IN GENERAL.—Section 1331 of the Housing  
18          and Community Development Act of 1992 (12  
19          U.S.C. 4561) is amended—

20                          (A) in the first sentence of subsection (a),  
21                  by inserting “of Housing and Urban Develop-  
22                  ment” after “The Secretary”; and

23                          (B) by adding at the end the following:

1       “(d) DEFINITION.—For purposes of this part, the  
 2 term ‘Secretary’ means the Secretary of Housing and  
 3 Urban Development.”.

4           (2) ANNUAL REPORT ON HOUSING GOALS.—  
 5 Section 1324 of the Housing and Community Devel-  
 6 opment Act of 1992 (12 U.S.C. 4544) is amended  
 7 by inserting “of Housing and Urban Development”  
 8 after “Secretary” each place such term appears.

9           (e) TECHNICAL AND CONFORMING AMENDMENTS.—  
 10           (1) FANNIE MAE.—Section 302(b)(6) of the  
 11 Federal National Mortgage Association Charter Act  
 12 (12 U.S.C. 1717(b)(6)) is amended by striking “Sec-  
 13 retary under section 1322” and inserting “Director  
 14 under section 1319H”.

15           (2) FREDDIE MAC.—Section 305(c) of the Fed-  
 16 eral Home Loan Mortgage Corporation Act (12  
 17 U.S.C. 1454(c)) is amended by striking “Secretary  
 18 under section 1322” and inserting “Director under  
 19 section 1319H”.

20           (3) FINANCIAL INSTITUTIONS EXAMINATION  
 21 COUNCIL.—Section 1004(a) of the Federal Financial  
 22 Institutions Examination Council Act of 1978 (12  
 23 U.S.C. 3303(a)) is amended—

24                   (A) in paragraph (5), by striking the pe-  
 25 riod at the end and inserting “; and”; and

1 (B) by adding at the end the following:

2 “(6) the Director of the Office of Federal  
3 Housing Enterprise Supervision.”.

4 **SEC. 103. EXAMINERS AND ACCOUNTANTS.**

5 (a) EXAMINATIONS.—Section 1317 of the Housing  
6 and Community Development Act of 1992 (12 U.S.C.  
7 4517) is amended—

8 (1) in the second sentence of subsection (c), by  
9 striking “The” and inserting “During the 3-year pe-  
10 riod beginning on the date of enactment of the Fed-  
11 eral Housing Enterprise Oversight Modernization  
12 Act of 2003, the”; and

13 (2) in subsection (d), by striking “Federal Re-  
14 serve banks” and inserting “Director of the Office  
15 of Thrift Supervision”.

16 (b) ENHANCED AUTHORITY TO HIRE EXAMINERS  
17 AND ACCOUNTANTS.—Section 1317 of the Housing and  
18 Community Development Act of 1992 (12 U.S.C. 4517)  
19 is amended by adding at the end the following:

20 “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
21 AND EXAMINERS.—

22 “(1) APPLICABILITY.—This section applies with  
23 respect to any position of examiner, accountant, and  
24 economist at the Office, with respect to supervision

1 and regulation of the enterprises, that is in the com-  
2 petitive service.

3 “(2) APPOINTMENT AUTHORITY.—

4 “(A) IN GENERAL.—The Director may ap-  
5 point candidates to any position described in  
6 paragraph (1)—

7 “(i) in accordance with the statutes,  
8 rules, and regulations governing appoint-  
9 ments in the excepted service; and

10 “(ii) notwithstanding any statutes,  
11 rules, and regulations governing appoint-  
12 ments in the competitive service.

13 “(B) RULE OF CONSTRUCTION.—The ap-  
14 pointment of a candidate to a position under  
15 this paragraph shall not be considered to cause  
16 such position to be converted from the competi-  
17 tive service to the excepted service.

18 “(3) REPORTS.—

19 “(A) IN GENERAL.—Not later than 90  
20 days after the end of fiscal year 2003 (for fiscal  
21 year 2003) and 90 days after the end of fiscal  
22 year 2005 (for fiscal years 2004 and 2005), the  
23 Director shall submit a report with respect to  
24 the exercise of the authority granted to the Di-

1 rector by paragraph (2) during such fiscal years  
2 to the—

3 “(i) Committee on Government Re-  
4 form and the Committee on Financial  
5 Services of the House of Representatives;  
6 and

7 “(ii) Committee on Governmental Af-  
8 fairs and the Committee on Banking,  
9 Housing, and Urban Affairs of the Senate.

10 “(B) CONTENTS.—The reports submitted  
11 under subparagraph (A) shall describe the  
12 changes in the hiring process authorized by  
13 paragraph (2), including relevant information  
14 related to—

15 “(i) the quality of candidates;

16 “(ii) the procedures used by the Di-  
17 rector to select candidates through the  
18 streamlined hiring process;

19 “(iii) the numbers, types, and grades  
20 of employees hired under the authority;

21 “(iv) any benefits or shortcomings as-  
22 sociated with the use of the authority;

23 “(v) the effect of the exercise of the  
24 authority on the hiring of veterans and  
25 other demographic groups;

1 “(vi) the way in which managers were  
 2 trained in the administration of the  
 3 streamlined hiring system; and

4 “(vii) a list of the specific functional  
 5 responsibilities of Office personnel (such as  
 6 examinations, supervision, regulatory over-  
 7 sight, and risk analysis) and the percent-  
 8 age of the total personnel employed within  
 9 the Office that are engaged in each such  
 10 activity.”.

11 (c) ALLOCATION OF PERSONNEL RESOURCES.—Sec-  
 12 tion 1315 of the Housing and Community Development  
 13 Act of 1992 (12 U.S.C. 4515), as amended by this Act,  
 14 is amended by adding at the end the following:

15 “(f) MAINTENANCE OF ADEQUATE EXAMINATION  
 16 AND SUPERVISORY PERSONNEL.—In carrying out this  
 17 Act, the Director shall ensure that a significant amount  
 18 of the Office resources allocated for the hiring and support  
 19 of personnel are applied to personnel engaged in the exam-  
 20 ination and supervision of the enterprises.”.

21 **SEC. 104. REGULATIONS.**

22 Section 1319G of the Housing and Community De-  
 23 velopment Act of 1992 (12 U.S.C. 4526) is amended in  
 24 subsection (c), by striking “Committee on Banking, Fi-



1 nance and Urban Affairs” and inserting “Committee on  
2 Financial Services”.

3 **SEC. 105. ASSESSMENTS.**

4 Section 1316 of the Housing and Community Devel-  
5 opment Act of 1992 (12 U.S.C. 4516) is amended—

6 (1) by striking subsection (a) and inserting the  
7 following:

8 “(a) ANNUAL ASSESSMENTS.—The Director shall es-  
9 tablish and collect from the enterprises annual assess-  
10 ments in an amount not exceeding the amount sufficient  
11 to provide for all reasonable costs and expenses of the Of-  
12 fice, including—

13 “(1) the expenses of any examination under  
14 section 1317; and

15 “(2) the expenses of obtaining any review or  
16 credit assessment under section 1319.”;

17 (2) in subsection (b), in paragraph (2), by mov-  
18 ing the margin 2 ems to the right;

19 (3) in subsection (c), by adding at the end the  
20 following: “The Director may adjust the amounts of  
21 any semiannual assessments for an assessment  
22 under subsection (a) that are to be paid pursuant to  
23 subsection (b) by an enterprise, as necessary in the  
24 discretion of the Director, to ensure that the costs

1 of enforcement activities under subtitles B and C for  
 2 an enterprise are borne only by that enterprise.”;

3 (4) in subsection (f), by striking “Any assess-  
 4 ments collected” and all that follows through the  
 5 end of the subsection and inserting the following:  
 6 “Notwithstanding any other provision of law, any  
 7 assessments collected by the Director pursuant to  
 8 this section shall be deposited in the Fund in an ac-  
 9 count for the Director. Any amounts in the Fund  
 10 are hereby made available, without fiscal year limita-  
 11 tion, to the Director (to the extent of amounts in the  
 12 Director’s account) for carrying out the supervisory  
 13 and regulatory responsibilities of the Director with  
 14 respect to the enterprises, including any necessary  
 15 administrative and nonadministrative expenses of  
 16 the Director in carrying out the purposes of this  
 17 title, the Federal National Mortgage Association  
 18 Charter Act (12 U.S.C. 1716 et seq.), and the Fed-  
 19 eral Home Loan Mortgage Corporation Act (12  
 20 U.S.C. 1451 et seq.).”; and

21 (5) in subsection (g), by striking paragraphs  
 22 (1) and (2) and inserting the following:

23 “(1) FINANCIAL OPERATING PLANS AND FORE-  
 24 CASTS.—Before the beginning of each fiscal year,  
 25 the Director shall submit a copy of the financial op-

1 erating plans and forecasts for the Office to the Di-  
 2 rector of the Office of Management and Budget.

3 “(2) REPORTS OF OPERATIONS.—As soon as  
 4 practicable after the end of each fiscal year and each  
 5 quarter thereof, the Director shall submit a copy of  
 6 the report of the results of the operations of the Of-  
 7 fice during such period to the Director of the Office  
 8 of Management and Budget.”.

9 **SEC. 106. INDEPENDENCE OF DIRECTOR IN CONGRES-**  
 10 **SIONAL TESTIMONY AND RECOMMENDA-**  
 11 **TIONS.**

12 Section 111 of Public Law 93–495 (12 U.S.C. 250)  
 13 is amended by inserting “the Director of the Office of  
 14 Federal Housing Enterprise Supervision of the Depart-  
 15 ment of the Treasury,” after “the Federal Housing Fi-  
 16 nance Board,”.

17 **SEC. 107. NONMORTGAGE-RELATED INVESTMENTS.**

18 Subtitle B of title XIII of the Housing and Commu-  
 19 nity Development Act of 1992 (12 U.S.C. 4611 et seq.)  
 20 is amended—

21 (1) by striking the subtitle designation and  
 22 heading and inserting the following:

1 **“Subtitle B—Required Capital Lev-**  
 2 **els for Enterprises, Special En-**  
 3 **forcement Powers, and Non-**  
 4 **mortgage-Related Assets”;**

5 and

6 (2) by adding at the end the following:

7 **“SEC. 1369E. NONMORTGAGE-RELATED ASSETS.**

8 **“(a) IN GENERAL.—**

9 **“(1) LIQUIDITY PORTFOLIO.—**On a quarterly  
 10 basis, the Director shall review and provide written  
 11 comment to each enterprise on the nonmortgage-re-  
 12 lated assets held by each enterprise in the liquidity  
 13 portfolio of such enterprise. The Director shall de-  
 14 fine the term ‘nonmortgage-related asset’ for pur-  
 15 poses of this section.

16 **“(2) ASSETS OUTSIDE OF LIQUIDITY PORT-**  
 17 **FOLIO.—**The Director may review and provide writ-  
 18 ten comment to each enterprise on the quality and  
 19 appropriateness of nonmortgage-related assets held  
 20 by an enterprise outside of the liquid portfolio of  
 21 such enterprise.

22 **“(b) REPORT.—**On a biennial basis, the Director  
 23 shall submit a report to Congress containing information  
 24 on—

1           “(1) any written comments provided to the en-  
2           terprises under subsection (a)(1) or (2); and

3           “(2) whether or not each enterprise is in com-  
4           pliance with the Sound Practices for Managing Li-  
5           quidity in Banking Organisations established by the  
6           Basel Committee, or any successor thereto.”.

7   **SEC. 108. REPORTS.**

8           Sections 1327 and 1328 of the Housing and Commu-  
9           nity Development Act of 1992 (12 U.S.C. 4547, 4548)  
10          are amended by striking “Secretary” each place it appears  
11          and inserting “Director”.

12   **SEC. 109. REVIEWS OF ENTERPRISES.**

13          Section 1319 of the Housing and Community Devel-  
14          opment Act of 1992 (12 U.S.C. 4519) is amended—

15               (1) by striking the heading and inserting the  
16          following:

17   **“SEC. 1319. REVIEW OF ENTERPRISES.”;**

18               (2) by inserting after “any entity” the fol-  
19          lowing: “that the Director considers appropriate, in-  
20          cluding an entity”;

21               (3) by inserting “(a) AUTHORITY TO PROVIDE  
22          FOR REVIEWS.—” before “The”; and

23               (4) by adding at the end the following new sub-  
24          section:

1       “(b) BIENNIAL DETERMINATION OF CREDIT RAT-  
2   ING.—

3               “(1) IN GENERAL.—On a biennial basis, the Di-  
4       rector shall provide for 2 entities recognized by the  
5       Division of Market Regulation of the Securities and  
6       Exchange Commission as nationally recognized sta-  
7       tistical rating organizations, each to conduct an as-  
8       sessment of the financial condition of each enterprise  
9       for the purpose of determining the level of risk that  
10      the enterprise will be unable to meet its obligations,  
11      taking into consideration the legal status evidenced  
12      by the statements required under—

13               “(A) the penultimate sentence of section  
14      304(b) of the Federal National Mortgage Asso-  
15      ciation Charter Act (12 U.S.C. 1719(b));

16               “(B) the last sentence of section 304(d) of  
17      the Federal National Mortgage Association  
18      Charter Act (12 U.S.C. 1719(d));

19               “(C) the penultimate sentence of section  
20      304(e) of the Federal National Mortgage Asso-  
21      ciation Charter Act (12 U.S.C. 1719(e)); and

22               “(D) section 306(h)(2) of the Federal  
23      Home Loan Mortgage Corporation Act (12  
24      U.S.C. 1455(h)(2)).

1           “(2) CREDIT RATING.—The assessment under  
2       paragraph (1) shall include—

3           “(A) assigning a credit rating for each en-  
4       terprise, using a scale similar to that used by  
5       such organization with respect to obligations of  
6       other financial institutions; and

7           “(B) the report regarding such assessment  
8       and the rating in the report of the Director  
9       under section 1319B(a).”.

10 **SEC. 110. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

11       Section 1361 of the Housing and Community Devel-  
12       opment Act of 1992 (12 U.S.C. 4611) is amended—

13           (1) by redesignating subsections (d), (e), and  
14       (f) as subsections (f), (g), and (h), respectively; and

15           (2) by inserting after subsection (c) the fol-  
16       lowing:

17       “(d) PERIODIC REVIEW OF RISK-BASED CAPITAL  
18       TEST.—

19           “(1) IN GENERAL.—Not later than 5 years  
20       after the date of enactment of the Federal Housing  
21       Enterprise Oversight Modernization Act of 2003,  
22       and once every 5 years thereafter, the Director shall  
23       conduct a review of the risk-based capital test adopt-  
24       ed in accordance with this subtitle and submit a re-  
25       port to Congress on the findings of such review, the

1       appropriateness of the risk-based capital test, and  
 2       any legislative recommendations that would, as nec-  
 3       essary—

4               “(A) better align capital with risk; and

5               “(B) reflect evolving best practices for  
 6       risk-based capital standards for large, complex  
 7       financial institutions.”

8               “(2) SAVINGS PROVISION.—Notwithstanding  
 9       paragraph (1), the Director shall retain all authority  
 10      under this section to modify the current risk-based  
 11      capital rule as the Director determines.

12      “(e) REVIEW OF RISK-BASED CAPITAL LEVEL.—  
 13      Notwithstanding any other provision of law, if the Direc-  
 14      tor determines that the risk-based capital level of an enter-  
 15      prise is inadequate, the Director may make such adjust-  
 16      ments to the risk-based capital level of that enterprise as  
 17      the Director determines necessary to ensure the safe and  
 18      sound financial operation of that enterprise.”.

19      **SEC. 111. MINIMUM AND CRITICAL CAPITAL LEVELS.**

20      Section 1362(b) of the Housing and Community De-  
 21      velopment Act of 1992 (12 U.S.C. 4612) is amended to  
 22      read as follows:

23      “(b) AUTHORITY TO ISSUE REGULATIONS.—The Di-  
 24      rector shall issue such regulations as the Director deter-



1 mines necessary to ensure that the enterprises comply  
 2 with the requirements of subsection (a).”.

3 **SEC. 112. REQUIRED DISCLOSURES.**

4 (a) FANNIE MAE AND FREDDIE MAC.—Part 1 of  
 5 subtitle A of the Federal Housing Enterprises Financial  
 6 Safety and Soundness Act of 1992 (12 U.S.C. 4501 et  
 7 seq.), as amended by this Act, is amended by adding at  
 8 the end the following:

9 **“SEC. 1319L. REGISTRATION OF STOCK AND PUBLIC DIS-**  
 10 **CLOSURES.**

11 “(a) REGISTRATION OF STOCK UNDER THE SECURI-  
 12 TIES EXCHANGE ACT.—

13 “(1) IN GENERAL.—Notwithstanding its status  
 14 as an exempted security for purposes of the Securi-  
 15 ties Exchange Act of 1934 pursuant to section 311  
 16 of the Federal National Mortgage Association Char-  
 17 ter Act and section 306 of the Federal Home Loan  
 18 Mortgage Corporation Act, as applicable, the com-  
 19 mon stock of each enterprise shall be subject to—

20 “(A) section 12(g) of the Securities Ex-  
 21 change Act of 1934; and

22 “(B) sections 14 and 16 of that Act.

23 “(2) REVIEW.—All reports, statements, and  
 24 forms filed with the Securities and Exchange Com-  
 25 mission under this subsection shall be reviewed and

1       commented upon by the Commission to the same ex-  
2       tent and with the same frequency as comparable re-  
3       ports and materials filed by other issuers.

4       “(b) CREDIT RATING.—An enterprise shall annually  
5       disclose to the public the credit rating of such enterprise.

6       “(c) MORTGAGE PORTFOLIO.—An enterprise shall  
7       disclose to the public, on a monthly basis, the effect on  
8       its mortgage portfolio of—

9               “(1) a 50 basis point change in interest rates;  
10       and

11               (2) a 25 basis point change in the slope of the  
12       yield curve.

13       “(d) CREDIT RISK DISCLOSURES.—An enterprise  
14       shall disclose to the public, on a quarterly basis, the finan-  
15       cial impact on the enterprise of an immediate 5 percent  
16       decline in the average price of single-family housing within  
17       the United States.”.

18       (b) FEDERAL HOME LOAN BANKS.—Section 6 of the  
19       Federal Home Loan Bank Act (12 U.S.C. 1426) is  
20       amended by adding at the end the following:

21       “(i) REGISTRATION AND REPORTING REQUIRE-  
22       MENTS.—

23               “(1) IN GENERAL.—Notwithstanding any other  
24       provision of law, the Class A stock and Class B

1 stock issued by each Federal home loan bank shall  
 2 be subject to—

3 “(A) section 12(g) of the Securities Ex-  
 4 change Act of 1934; and

5 “(B) sections 14 and 16 of that Act.

6 “(2) REVIEW.—All reports, statements, and  
 7 forms filed with the Securities and Exchange Com-  
 8 mission under this subsection shall be reviewed and  
 9 commented upon by the Commission to the same ex-  
 10 tent and with the same frequency as comparable re-  
 11 ports and materials filed by other issuers.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall take effect on the date of enactment of  
 14 this Act, or such later date as determined by the Securities  
 15 and Exchange Commission.

16 **SEC. 113. FEDERAL HOUSING FINANCE BOARD.**

17 (a) APPOINTMENT OF SECRETARY OF THE TREAS-  
 18 URY TO FHFB.—Section 2(11) of the Federal Home  
 19 Loan Bank Act (12 U.S.C. 1422(11)) is amended by strik-  
 20 ing “Secretary of Housing and Urban Development” and  
 21 inserting “Secretary of the Treasury”.

22 (b) STUDY OF MERGER OF FHFB WITH OFHES.—

23 (1) IN GENERAL.—The Secretary of the Treas-  
 24 ury, after consultation with the Secretary of Hous-  
 25 ing and Urban Development, shall study and report

1 on any recommendations regarding the consolidation  
 2 of the responsibilities of the Federal Housing Fi-  
 3 nance Board, including oversight of the Federal  
 4 home loan banks, and the Office of Federal Housing  
 5 Enterprise Supervision of the Department of the  
 6 Treasury.

7 (2) REPORT.—Not later than 6 months after  
 8 the date of enactment of this Act, the Secretary of  
 9 the Treasury shall submit a report to Congress on—

10 (A) the results of the study conducted  
 11 under subsection (a); and

12 (B) any recommendations regarding legis-  
 13 lative or administrative changes.

14 **SEC. 114. DEFINITIONS.**

15 Section 1303 of the Housing and Community Devel-  
 16 opment Act of 1992 (12 U.S.C. 4502) is amended—

17 (1) in each of paragraphs (5) and (14), by  
 18 striking “Federal Housing Enterprise Oversight of  
 19 the Department of Housing and Urban Develop-  
 20 ment” each place that term appears and inserting  
 21 “Federal Housing Enterprise Supervision of the De-  
 22 partment of the Treasury”;

23 (2) in paragraphs (8), (9), (10), and (19), by  
 24 inserting “of Housing and Urban Development”  
 25 after “Secretary” each place that term appears;

1 (3) by striking paragraph (15);

2 (4) by redesignating paragraphs (7) through  
3 (14) (as amended by this Act) as paragraphs (8)  
4 through (15), respectively; and

5 (5) by inserting after paragraph (6) the fol-  
6 lowing:

7 “(7) ENTERPRISE-AFFILIATED PARTY.—The  
8 term ‘enterprise-affiliated party’ means—

9 “(A) any director, officer, employee, or  
10 controlling stockholder of, or agent for, an en-  
11 terprise;

12 “(B) any shareholder, consultant, joint  
13 venture partner, and any other person, as de-  
14 termined by the Director (by regulation or case-  
15 by-case), who participates in the conduct of the  
16 affairs of an enterprise; and

17 “(C) any independent contractor (including  
18 any attorney, appraiser, or accountant), to the  
19 extent that such person knowingly or recklessly  
20 participates in—

21 “(i) any violation of any law or regu-  
22 lation;

23 “(ii) any breach of fiduciary duty; or

24 “(iii) any unsafe or unsound practice,

1           which caused or is likely to cause more than a  
 2           minimal financial loss to, or a significant ad-  
 3           verse effect on, the enterprise.”.

## 4           **Subtitle B—Prompt Corrective** 5           **Action**

### 6   **SEC. 131. CAPITAL CLASSIFICATIONS.**

7           Section 1364 of the Housing and Community Devel-  
 8   opment Act of 1992 (12 U.S.C. 4614) is amended—

9           (1) by striking subsection (b) and inserting the  
 10   following:

11       “(b) DISCRETIONARY CLASSIFICATION.—

12       “(1) GROUNDS FOR RECLASSIFICATION.—The  
 13   Director may reclassify an enterprise under para-  
 14   graph (2), if—

15       “(A) at any time, the Director determines  
 16   in writing that an enterprise is engaging in con-  
 17   duct that could result in a rapid depletion of  
 18   core capital or that the value of the property  
 19   subject to mortgages held or securitized by the  
 20   enterprise has decreased significantly;

21       “(B) after notice and an opportunity for  
 22   hearing, the Director determines that an enter-  
 23   prise is in an unsafe or unsound condition; or

1           “(C) pursuant to section 1371(b), the Di-  
 2           rector deems an enterprise to be engaging in an  
 3           unsafe or unsound practice.

4           “(2) RECLASSIFICATION.—In addition to any  
 5           other action authorized under this title, including  
 6           the reclassification of an enterprise for any reason  
 7           not specified in this subsection, if the Director takes  
 8           any action described in paragraph (1) the Director  
 9           may classify an enterprise—

10           “(A) as undercapitalized, if the enterprise  
 11           is otherwise classified as adequately capitalized;

12           “(B) as significantly undercapitalized, if  
 13           the enterprise is otherwise classified as under-  
 14           capitalized; and

15           “(C) as critically undercapitalized, if the  
 16           enterprise is otherwise classified as significantly  
 17           undercapitalized.”;

18           (2) by redesignating subsection (d) as sub-  
 19           section (e); and

20           (3) by inserting after subsection (c) the fol-  
 21           lowing:

22           “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

23           “(1) IN GENERAL.—An enterprise shall make  
 24           no capital distribution if, after making the distribu-  
 25           tion, the enterprise would be undercapitalized.

1           “(2) EXCEPTION.—Notwithstanding paragraph  
 2           (1), the Director may permit an enterprise to repur-  
 3           chase, redeem, retire, or otherwise acquire shares or  
 4           ownership interests, if the repurchase, redemption,  
 5           retirement, or other acquisition—

6                   “(A) is made in connection with the  
 7                   issuance of additional shares or obligations of  
 8                   the enterprise in at least an equivalent amount;  
 9                   and

10                   “(B) will reduce the financial obligations of  
 11                   the enterprise or otherwise improve the finan-  
 12                   cial condition of the enterprise.”.

13 **SEC. 132. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
 14 **CAPITALIZED ENTERPRISES.**

15           (a) EFFECTIVE DATE FOR SUPERVISORY ACTIONS.—  
 16 Regulations issued by the Director of the Office of Federal  
 17 Housing Enterprise Supervision under section 1361(e) of  
 18 the Federal Housing Enterprises Financial Safety and  
 19 Soundness Act of 1992, as amended by section  
 20 161(a)(5)(A) of this Act, shall become effective not earlier  
 21 than 6 months after the date of enactment of this Act.

22           (b) SUPERVISORY ACTIONS.—Section 1365 of the  
 23 Housing and Community Development Act of 1992 (12  
 24 U.S.C. 4615) is amended—

25                   (1) in subsection (a)—



1 (A) by redesignating paragraphs (1) and  
 2 (2) as paragraphs (2) and (3), respectively;

3 (B) by inserting before paragraph (2) the  
 4 following:

5 “(1) REQUIRED MONITORING.—The Director  
 6 shall—

7 “(A) closely monitor the condition of any  
 8 undercapitalized enterprise;

9 “(B) closely monitor compliance with the  
 10 capital restoration plan, restrictions, and re-  
 11 quirements imposed under this section; and

12 “(C) periodically review the plan, restric-  
 13 tions, and requirements applicable to the under-  
 14 capitalized enterprise to determine whether the  
 15 plan, restrictions, and requirements are achiev-  
 16 ing the purpose of this section.”; and

17 (C) by adding at the end the following:

18 “(4) RESTRICTION OF ASSET GROWTH.—An  
 19 undercapitalized enterprise shall not permit its aver-  
 20 age total assets during any calendar quarter to ex-  
 21 ceed its average total assets during the preceding  
 22 calendar quarter, unless—

23 “(A) the Board has accepted the capital  
 24 restoration plan of the enterprise;

1           “(B) any increase in total assets is con-  
2           sistent with the plan; and

3           “(C) the ratio of tangible equity to assets  
4           of the enterprise increases during the calendar  
5           quarter at a rate sufficient to enable the enter-  
6           prise to become adequately capitalized within a  
7           reasonable time.

8           “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
9           ISSUANCE OF NEW PRODUCTS.—An undercapitalized  
10          enterprise shall not, directly or indirectly, acquire  
11          any interest in any entity or issue a new product,  
12          unless—

13               “(A) the Director has accepted the capital  
14               restoration plan of the enterprise, the enterprise  
15               is implementing the plan, and the Director de-  
16               termines that the proposed action is consistent  
17               with and will further the achievement of the  
18               plan; or

19               “(B) the Director determines that the pro-  
20               posed action will further the purpose of this  
21               section.”;

22           (2) in the subsection heading for subsection (b),  
23          by striking “FROM UNDERCAPITALIZED TO SIGNIFI-  
24          CANTLY UNDERCAPITALIZED”;

1           (3) by redesignating subsection (c) (as amended  
2           by subsection (a) of this section) as subsection (d);  
3           and

4           (4) by inserting after subsection (b) the fol-  
5           lowing:

6           “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
7           Director may take, with respect to an undercapitalized en-  
8           terprise, any of the actions authorized to be taken under  
9           section 1366 with respect to a significantly undercapital-  
10          ized enterprise, if the Director determines that such ac-  
11          tions are necessary to carry out the purpose of this sub-  
12          title.”.

13   **SEC. 133. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
14                           **CANTLY UNDERCAPITALIZED ENTERPRISES.**

15          Section 1366 of the Housing and Community Devel-  
16          opment Act of 1992 (12 U.S.C. 4616) is amended—

17               (1) in subsection (b)—

18                       (A) in the subsection heading, by striking  
19                       “DISCRETIONARY SUPERVISORY ACTIONS” and  
20                       inserting “SPECIFIC ACTIONS”;

21                       (B) in the matter preceding paragraph (1),  
22                       by striking “may, at any time, take any” and  
23                       inserting “shall carry out this section by taking,  
24                       at any time, 1 or more”;

1 (C) by redesignating paragraphs (5) and  
2 (6) as paragraphs (6) and (7), respectively;

3 (D) by inserting after paragraph (4) the  
4 following:

5 “(5) IMPROVEMENT OF MANAGEMENT.—

6 “(A) NEW ELECTION OF BOARD.—Order a  
7 new election for the board of directors of the  
8 enterprise.

9 “(B) DISMISSAL OF DIRECTORS OR EXECU-  
10 TIVE OFFICERS.—Require the enterprise to dis-  
11 miss from office any director or executive offi-  
12 cer who had held office for more than 180 days  
13 immediately before the date on which the enter-  
14 prise became undercapitalized. Dismissal under  
15 this subparagraph shall not be construed to be  
16 a removal pursuant to the Director’s enforce-  
17 ment powers under section 1377.

18 “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
19 FICERS.—Require the enterprise to employ  
20 qualified executive officers (who, if the Director  
21 so specifies, shall be subject to approval by the  
22 Director).”; and

23 (E) by adding at the end the following:

24 “(8) OTHER ACTION.—Require the enterprise  
25 to take any other action that the Director deter-

1 mines will better carry out the purpose of this sec-  
 2 tion than any of the other actions specified in this  
 3 paragraph.”;

4 (2) by redesignating subsection (c) as sub-  
 5 section (d); and

6 (3) by inserting after subsection (b) the fol-  
 7 lowing:

8 “(c) RESTRICTION ON COMPENSATION OF EXECU-  
 9 TIVE OFFICERS.—An enterprise that is classified as sig-  
 10 nificantly undercapitalized may not, without prior written  
 11 approval by the Director—

12 “(A) pay any bonus to any executive offi-  
 13 cer; or

14 “(B) provide compensation to any execu-  
 15 tive officer at a rate exceeding the average rate  
 16 of compensation of that officer (excluding bo-  
 17 nuses, stock options, and profit sharing) during  
 18 the 12 calendar months preceding the calendar  
 19 month in which the enterprise became classified  
 20 as significantly undercapitalized.”.

## 21 **Subtitle C—Enforcement Actions**

### 22 **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

23 Section 1371 of the Housing and Community Devel-  
 24 opment Act of 1992 (12 U.S.C. 4631) is amended—

1           (1) by striking subsections (a) and (b) and in-  
 2           serting the following:

3           “(a) ISSUANCE FOR UNSAFE OR UNSOUND PRAC-  
 4           TICES AND VIOLATIONS OF RULES OR LAWS.—

5           “(1) IN GENERAL.—The Director may issue  
 6           and serve upon the enterprise or an enterprise-affili-  
 7           ated party a notice of charges under this section if—

8           “(A) in the opinion of the Director, an en-  
 9           terprise or any enterprise-affiliated party is en-  
 10          gaging or has engaged, or the Director has rea-  
 11          sonable cause to believe that the enterprise or  
 12          any enterprise-affiliated party is about to en-  
 13          gage, in an unsafe or unsound practice in con-  
 14          ducting the business of the enterprise or is vio-  
 15          lating or has violated; or

16          “(B) the Director has reasonable cause to  
 17          believe that the enterprise or any enterprise-af-  
 18          filiated party is about to violate, a law, rule, or  
 19          regulation, or any condition imposed in writing  
 20          by the Director in connection with the granting  
 21          of any application or other request by the enter-  
 22          prise or any written agreement entered into  
 23          with the Director.

24          “(2) LIMITATIONS.—The Director may not en-  
 25          force compliance with—

1           “(A) any housing goal established under  
2           subpart B of part 2 of subtitle A;

3           “(B) section 1336 or 1337;

4           “(C) subsection (m) or (n) of section 309  
5           of the Federal National Mortgage Association  
6           Charter Act (12 U.S.C. 1723a(m), (n)); or

7           “(D) subsection (e) or (f) of section 307 of  
8           the Federal Home Loan Mortgage Corporation  
9           Act (12 U.S.C. 1456(e), (f)).

10       “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If  
11       an enterprise receives, in its most recent report of exam-  
12       ination, a less-than-satisfactory rating for asset quality,  
13       management, earnings, or liquidity, the Director may (if  
14       the deficiency is not corrected) deem the enterprise to be  
15       engaging in an unsafe or unsound practice for purposes  
16       of this subsection.”; and

17       (2) in subsection (c)(2), by striking “or direc-  
18       tor” and inserting “director, or enterprise-affiliated  
19       party”.

20       **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

21       Section 1372 of the Housing and Community Devel-  
22       opment Act of 1992 (12 U.S.C. 4632) is amended—

23       (1) by striking subsection (a) and inserting the  
24       following:

25       “(a) GROUNDS FOR ISSUANCE.—

1           “(1) IN GENERAL.—The Director may issue a  
2           temporary order under paragraph (2) if the Director  
3           determines that the violation or threatened violation  
4           or the unsafe or unsound practice or practices speci-  
5           fied in the notice of charges served upon the enter-  
6           prise or any enterprise-affiliated party under section  
7           1371(a), or the continuation thereof, is likely to  
8           cause insolvency or significant dissipation of assets  
9           or earnings of the enterprise, or is likely to weaken  
10          the condition of the enterprise prior to the comple-  
11          tion of the proceedings conducted pursuant to sec-  
12          tions 1371 and 1373.

13           “(2) CONTENTS OF ORDER.—Upon making a  
14          determination under paragraph (1), the Director  
15          may issue a temporary order requiring the enterprise  
16          or such party to cease and desist from any such vio-  
17          lation or practice and to take affirmative action to  
18          prevent or remedy such insolvency, dissipation, con-  
19          dition, or prejudice pending completion of such pro-  
20          ceedings. Such order may include any requirement  
21          authorized under section 1371(d).”;

22           (2) in subsection (b), by striking “or director”  
23          and inserting “director, or enterprise-affiliated  
24          party”;



1           (3) in subsection (d), striking “or director” and  
2           inserting “director, or enterprise-affiliated party”;  
3           and

4           (4) by striking subsection (e) and in inserting  
5           the following:

6           “(e) ENFORCEMENT.—

7           “(1) IN GENERAL.—In the case of violation or  
8           threatened violation of, or failure to obey, a tem-  
9           porary cease-and-desist order issued under this sec-  
10          tion, the Director may apply to the United States  
11          District Court for the District of Columbia or the  
12          United States district court within the jurisdiction of  
13          which the headquarters of the enterprise is located,  
14          for an injunction to enforce such order.

15          “(2) ISSUANCE OF INJUNCTION.—If the court  
16          determines that there has been a violation or threat-  
17          ened violation or failure to obey a temporary cease-  
18          and-desist order under paragraph (1), the court  
19          shall issue an injunction against the enterprise to  
20          enforce such order.”.

21   **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

22          (a) IN GENERAL.—Subtitle C of the Federal Housing  
23          Enterprises Financial Safety and Soundness Act (12  
24          U.S.C. 4501 et seq.) is amended—

1           (1) by redesignating sections 1377 through  
2       1379B (12 U.S.C. 4637–41) as sections 1379  
3       through 1379D, respectively; and

4           (2) by inserting after section 1376 (12 U.S.C.  
5       4636) the following:

6       **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

7           “(a) AUTHORITY TO ISSUE ORDER.—

8               “(1) IN GENERAL.—The Director may serve  
9       upon an enterprise-affiliated party a written notice  
10      of the Director’s intention to remove such party  
11      from office or to prohibit any further participation  
12      by such party, in any manner, in the conduct of the  
13      affairs of any enterprise in any case to which para-  
14      graph (2) applies.

15           “(2) CRITERIA.—The Director may serve writ-  
16      ten notice under paragraph (1) whenever the Direc-  
17      tor determines that—

18               “(A) any enterprise-affiliated party has, di-  
19      rectly or indirectly—

20                   “(i) violated—

21                       “(I) any law or regulation;

22                       “(II) any cease-and-desist order  
23                   which has become final;

24                       “(III) any condition imposed in  
25                   writing by the Director in connection

1 with the grant of any application or  
2 other request by such enterprise; or

3 “(IV) any written agreement be-  
4 tween such enterprise and the Direc-  
5 tor;

6 “(ii) engaged or participated in any  
7 unsafe or unsound practice in connection  
8 with any enterprise; or

9 “(iii) committed or engaged in any  
10 act, omission, or practice which constitutes  
11 a breach of such party’s fiduciary duty;

12 “(B) by reason of the violation, practice, or  
13 breach described in any subparagraph of para-  
14 graph (1)—

15 “(i) such enterprise has suffered or  
16 will probably suffer financial loss or other  
17 damage; or

18 “(ii) such party has received financial  
19 gain or other benefit by reason of such vio-  
20 lation, practice, or breach; and

21 “(C) such violation, practice, or breach—

22 “(i) involves personal dishonesty on  
23 the part of such party; or

1 “(ii) demonstrates willful or con-  
 2 tinuing disregard by such party for the  
 3 safety or soundness of such enterprise.

4 “(b) SUSPENSION ORDER.—

5 “(1) SUSPENSION OR PROHIBITION AUTHOR-  
 6 ITY.—If the Director serves written notice under  
 7 subsection (a) to any enterprise-affiliated party of  
 8 the Director’s intention to issue an order, the Direc-  
 9 tor may suspend such party from office or prohibit  
 10 such party from further participation in any manner  
 11 in the conduct of the affairs of the enterprise, if the  
 12 Director—

13 “(A) determines that such action is nec-  
 14 essary for the protection of the enterprise; and

15 “(B) serves such party with written notice  
 16 of the suspension order.

17 “(2) EFFECTIVE PERIOD.—Any suspension  
 18 order issued under this section—

19 “(A) shall become effective upon service;  
 20 and

21 “(B) unless a court issues a stay of such  
 22 order under subsection (g), shall remain in ef-  
 23 fect and enforceable until—

24 “(i) the date on which the Director  
 25 dismisses the charges contained in the no-

1                   tice served under subsection (a) with re-  
2                   spect to such party; or

3                   “(ii) the effective date of an order  
4                   issued by the Director to such party under  
5                   subsection (a).

6                   “(3) COPY OF ORDER.—If the Director issues a  
7                   suspension order under this section to any enter-  
8                   prise-affiliated party, the Director shall serve a copy  
9                   of such order on any enterprise with which such  
10                  party is affiliated at the time such order is issued.

11                  “(c) NOTICE, HEARING, AND ORDER.—

12                  “(1) IN GENERAL.—A notice of intention to re-  
13                  move an enterprise-affiliated party from office or to  
14                  prohibit such party from participating in the con-  
15                  duct of the affairs of an enterprise shall—

16                       “(A) contain a statement of the facts con-  
17                       stituting grounds for such action; and

18                       “(B) fix a time and place at which a hear-  
19                       ing will be held on such action.

20                  “(2) HEARING.—The Director shall hold the  
21                  hearing not earlier than 30 days nor later than 60  
22                  days after the date of service of notice under para-  
23                  graph (1), unless an earlier or a later date is set by  
24                  the Director at the request of—

1           “(A) the enterprise-affiliated party, and for  
2           good cause shown; or

3           “(B) the Attorney General of the United  
4           States.

5           “(3) REMOVAL OR PROHIBITION.—

6           “(A) IN GENERAL.—The Director may  
7           issue such orders of suspension or removal from  
8           office, or prohibition from participation in the  
9           conduct of the affairs of the enterprise, if—

10           “(i) the enterprise-affiliated party  
11           named in the notice issued under para-  
12           graph (1) fails to appear at the hearing in  
13           person, or by a duly authorized representa-  
14           tive; or

15           “(ii) the Director determines, based  
16           upon the record of the hearing, that any of  
17           the grounds for removal or prohibition  
18           specified in the notice issued under para-  
19           graph (1) have been established.

20           “(B) EFFECTIVE DATE OF ORDER.—Any  
21           order issued under subparagraph (A) shall be-  
22           come effective at 30 days after service of the  
23           order to the enterprise-affiliated party and the  
24           relevant enterprise, except in the case of an

1 order issued upon consent, which shall become  
2 effective at the time specified therein.

3 “(C) TERM.—Any order issued under sub-  
4 paragraph (A) shall remain effective and en-  
5 forceable, except to such extent as it is stayed,  
6 modified, terminated, or set aside by action of  
7 the Director or a reviewing court.

8 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-  
9 TIES.—Any person subject to an order issued under this  
10 section shall not—

11 “(1) participate in any manner in the conduct  
12 of the affairs of any enterprise;

13 “(2) solicit, procure, transfer, attempt to trans-  
14 fer, vote, or attempt to vote any proxy, consent, or  
15 authorization with respect to any voting rights in  
16 any enterprise;

17 “(3) violate any voting agreement previously  
18 approved by the Director; or

19 “(4) vote for a director, or serve or act as an  
20 enterprise-affiliated party.

21 “(e) INDUSTRY-WIDE PROHIBITION.—

22 “(1) IN GENERAL.—Except as provided in sub-  
23 paragraph (2), any person who, pursuant to an  
24 order issued under subsection (h), has been removed  
25 or suspended from office in an enterprise or prohib-

1       ited from participating in the conduct of the affairs  
 2       of an enterprise may not, while such order is in ef-  
 3       fect, continue or commence to hold any office in, or  
 4       participate in any manner in the conduct of the af-  
 5       fairs of any enterprise.

6               “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
 7       TEN CONSENT.—If, on or after the date an order is  
 8       issued under this section which removes or suspends  
 9       from office any enterprise-affiliated party or pro-  
 10      hibits such party from participating in the conduct  
 11      of the affairs of an enterprise, such party receives  
 12      the written consent of the Director, the order shall,  
 13      to the extent of such consent, cease to apply to such  
 14      party with respect to the enterprise described in the  
 15      written consent. If the Director grants such a writ-  
 16      ten consent, the Director shall publicly disclose such  
 17      consent.

18              “(3) VIOLATION OF PARAGRAPH (1) TREATED  
 19      AS VIOLATION OF ORDER.—Any violation of para-  
 20      graph (1) by any person who is subject to an order  
 21      described in such subsection shall be treated as a  
 22      violation of the order.

23              “(f) APPLICABILITY.—This section shall only apply  
 24      to a person who is an individual, unless the Director spe-



1 cifically finds that it should apply to a corporation, firm,  
2 or other business enterprise.

3       “(g) STAY OF SUSPENSION AND PROHIBITION OF  
4 ENTERPRISE-AFFILIATED PARTY.—Not later than 10  
5 days after any enterprise-affiliated party has been sus-  
6 pended from office or prohibited from participation in the  
7 conduct of the affairs of an enterprise under this section,  
8 such party may apply to the United States District Court  
9 for the District of Columbia, or the United States district  
10 court for the judicial district in which the headquarters  
11 of the enterprise is located, for a stay of such suspension  
12 or prohibition pending the completion of the administra-  
13 tive proceedings pursuant to the notice served upon such  
14 party under this section, and such court shall have juris-  
15 diction to stay such suspension or prohibition.

16       “(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AF-  
17 FILIATED PARTY CHARGED WITH FELONY.—

18               “(1) SUSPENSION OR PROHIBITION.—

19                       “(A) IN GENERAL.—Whenever any enter-  
20 prise-affiliated party is charged in any informa-  
21 tion, indictment, or complaint, with the commis-  
22 sion of or participation in a crime involving dis-  
23 honesty or breach of trust which is punishable  
24 by imprisonment for a term exceeding 1 year  
25 under State or Federal law, the Director may,

1 if continued service or participation by such  
2 party may pose a threat to the enterprise or im-  
3 pair public confidence in the enterprise, by writ-  
4 ten notice served upon such party, suspend  
5 such party from office or prohibit such party  
6 from further participation in any manner in the  
7 conduct of the affairs of any enterprise.

8 “(B) PROVISIONS APPLICABLE TO NO-  
9 TICE.—

10 “(i) COPY.—A copy of any notice  
11 under subparagraph (A) shall also be  
12 served upon the relevant enterprise.

13 “(ii) EFFECTIVE PERIOD.—A suspen-  
14 sion or prohibition under subparagraph (A)  
15 shall remain in effect until the informa-  
16 tion, indictment, or complaint referred to  
17 in such subparagraph is finally disposed of  
18 or until terminated by the Director.

19 “(2) REMOVAL OR PROHIBITION.—

20 “(A) IN GENERAL.—If a judgment of con-  
21 viction or an agreement to enter a pretrial di-  
22 version or other similar program is entered  
23 against an enterprise-affiliated party in connec-  
24 tion with a crime described in paragraph  
25 (1)(A), at such time as such judgment is not

1 subject to further appellate review, the Director  
2 may, if continued service or participation by  
3 such party may pose a threat to the enterprise  
4 or impair public confidence in the enterprise,  
5 issue and serve upon such party an order re-  
6 moving such party from office or prohibiting  
7 such party from further participation in any  
8 manner in the conduct of the affairs of the en-  
9 terprise without the prior written consent of the  
10 Director.

11 “(B) PROVISIONS APPLICABLE TO  
12 ORDER.—

13 “(i) COPY.—A copy of any order  
14 under paragraph (2)(A) shall also be  
15 served upon the relevant enterprise, where-  
16 upon the enterprise-affiliated party who is  
17 subject to the order (if a director or an of-  
18 ficer) shall cease to be a director or officer  
19 of such enterprise.

20 “(ii) EFFECT OF ACQUITTAL.—A find-  
21 ing of not guilty or other disposition of the  
22 charge shall not preclude the Director from  
23 instituting proceedings after such finding  
24 or disposition to remove such party from  
25 office or to prohibit further participation in

1 enterprise affairs under subsection (a), (d),  
2 or (e).

3 “(iii) EFFECTIVE PERIOD.—Any no-  
4 tice of suspension or order of removal  
5 issued under this subsection shall remain  
6 effective and outstanding until the comple-  
7 tion of any hearing or appeal authorized  
8 under paragraph (4) unless terminated by  
9 the Director.

10 “(3) AUTHORITY OF REMAINING BOARD MEM-  
11 BERS.—

12 “(A) IN GENERAL.—If at any time, be-  
13 cause of the suspension of 1 or more directors  
14 pursuant to this section, there shall be on the  
15 board of directors of an enterprise less than a  
16 quorum of directors not so suspended, all pow-  
17 ers and functions vested in or exercisable by  
18 such board shall vest in and be exercisable by  
19 the director or directors on the board not so  
20 suspended, until such time as there shall be a  
21 quorum of the board of directors.

22 “(B) SUSPENSION OF ALL DIRECTORS.—In  
23 the event all of the directors of an enterprise  
24 are suspended pursuant to this section, the Di-  
25 rector shall appoint persons to serve tempo-

1 rarely as directors in their place and stead  
 2 pending the termination of such suspensions, or  
 3 until such time as those who have been sus-  
 4 pended, cease to be directors of the enterprise  
 5 and their respective successors take office.

6 “(4) HEARING REGARDING CONTINUED PAR-  
 7 TICIPATION.—

8 “(A) IN GENERAL.—Not later than 30  
 9 days after receipt of service of any notice of  
 10 suspension or order of removal issued under  
 11 paragraph (1) or (2), the enterprise-affiliated  
 12 party may request in writing an opportunity to  
 13 appear before the Director to show that the  
 14 continued service to or participation in the con-  
 15 duct of the affairs of the enterprise by such  
 16 party does not, or is not likely to, pose a threat  
 17 to the interests of the enterprise or threaten to  
 18 impair public confidence in the enterprise.

19 “(B) TIMING.—Upon receipt of a request  
 20 for a hearing under subparagraph (A), the Di-  
 21 rector shall fix a time (not more than 30 days  
 22 after receipt of such request, unless extended at  
 23 the request of such party) and place at which  
 24 such party may appear, personally or through  
 25 counsel, before the Director or 1 or more des-

1           ignated employees of the Director, to submit  
 2           written materials (or, at the discretion of the  
 3           Director, oral testimony) and oral argument.

4           “(C) NOTIFICATION OF DETERMINA-  
 5           TION.—Not later than 60 days after the hear-  
 6           ing under this paragraph, the Director shall no-  
 7           tify the enterprise-affiliated party whether the  
 8           suspension or prohibition from participation in  
 9           any manner in the conduct of the affairs of the  
 10          enterprise will be continued, terminated, or oth-  
 11          erwise modified, or whether the order removing  
 12          such party from office or prohibiting such party  
 13          from further participation in any manner in the  
 14          conduct of the affairs of the enterprise will be  
 15          rescinded or otherwise modified. Such notifica-  
 16          tion shall contain a statement of the basis for  
 17          the Director’s decision, if adverse to such party.

18          “(D) RULES.—The Director is authorized  
 19          to prescribe such rules as may be necessary to  
 20          carry out the purposes of this subsection.

21          “(i) HEARINGS AND JUDICIAL REVIEW.—

22               “(1) VENUE AND PROCEDURE.—

23                   “(A) IN GENERAL.—Any hearing provided  
 24                   for in this section shall be held in the District  
 25                   of Columbia or in the Federal judicial district

1 in which the headquarters of the enterprise is  
2 located, unless the party afforded the hearing  
3 consents to another place, and shall be con-  
4 ducted in accordance with the provisions of  
5 chapter 5 of title 5, United States Code.

6 “(B) ISSUANCE OF DECISION.—After a  
7 hearing under subparagraph (A), and within 90  
8 days after the Director has notified the parties  
9 that the case has been submitted to the court  
10 for final decision, the court shall render its de-  
11 cision (which shall include findings of fact upon  
12 which its decision is predicated) and shall issue  
13 and serve upon each party to the proceeding an  
14 order or orders consistent with the provisions of  
15 this section. Judicial review of any such order  
16 shall be exclusively as provided in this sub-  
17 section.

18 “(C) MODIFICATION.—Unless a petition  
19 for review is timely filed in a court of appeals  
20 of the United States, as provided in paragraph  
21 (2), and thereafter until the record in the pro-  
22 ceeding has been filed as so provided, the Direc-  
23 tor may at any time, upon such notice and in  
24 such manner as it shall deem proper, modify,  
25 terminate, or set aside any such order. Upon

1 such filing of the record, the Director may mod-  
2 ify, terminate, or set aside any such order with  
3 permission of the court.

4 “(2) REVIEW OF ORDER.—

5 “(A) IN GENERAL.—Any party to any pro-  
6 ceeding under paragraph (1) may obtain a re-  
7 view of any order served pursuant to paragraph  
8 (1) (other than an order issued with the con-  
9 sent of the enterprise or the enterprise-affiliated  
10 party concerned, or an order issued under sub-  
11 section (h) of this section) by filing in the  
12 United States Court of Appeals for the District  
13 of Columbia Circuit or court of appeals of the  
14 United States for the circuit in which the head-  
15 quarters of the enterprise is located, within 30  
16 days after the date of service of such order, a  
17 written petition praying that the order of the  
18 Director be modified, terminated, or set aside.

19 “(B) FILING OF RECORD.—A copy of a pe-  
20 tition filed under subparagraph (A) shall be  
21 transmitted by the clerk of the court to the Di-  
22 rector, and thereupon the Director shall file in  
23 the court the record in the proceeding, as pro-  
24 vided in section 2112 of title 28, United States  
25 Code.



“(C) JURISDICTION.—Upon the filing of a petition under subparagraph (A), the court in which it is filed shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

“(D) REVIEW.—Review of the petition by the court shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

“(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.”.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(f)) is amended by striking “section 1379B” and inserting “section 1379D”.

1           (2) FANNIE MAE CHARTER ACT.—The second  
 2           sentence of subsection (b) of section 308 of the Fed-  
 3           eral National Mortgage Association Charter Act (12  
 4           U.S.C. 1723(b)) is amended by striking “The” and  
 5           inserting “Except to the extent that action under  
 6           section 1377 of the Housing and Community Devel-  
 7           opment Act of 1992 temporarily results in a lesser  
 8           number, the”.

9           (3) FREDDIE MAC ACT.—The second sentence  
 10          of subparagraph (A) of section 303(a)(2) of the  
 11          Federal Home Loan Mortgage Corporation Act (12  
 12          U.S.C. 1452(a)(2)(A)) is amended by striking  
 13          “The” and inserting “Except to the extent action  
 14          under section 1377 of the Housing and Community  
 15          Development Act of 1992 temporarily results in a  
 16          lesser number, the”.

17 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

18          Section 1375 of the Housing and Community Devel-  
 19          opment Act of 1992 (12 U.S.C. 4635) is amended—

20               (1) by striking subsection (a) and inserting the  
 21          following:

22          “(a) ENFORCEMENT.—The Director may, in the dis-  
 23          cretion of the Director, apply to the United States District  
 24          Court for the District of Columbia, or the United States  
 25          district court within the jurisdiction of which the head-

1 quarters of the enterprise is located, for the enforcement  
 2 of any effective and outstanding notice or order issued  
 3 under this subtitle or subtitle B, or request that the Attor-  
 4 ney General of the United States bring such an action.  
 5 Such court shall have jurisdiction and power to order and  
 6 require compliance with such notice or order.”; and

7 (2) in subsection (b), by striking “or 1376” and  
 8 inserting “1376, or 1377”.

9 **SEC. 155. CIVIL MONEY PENALTIES.**

10 Section 1376 of the Housing and Community Devel-  
 11 opment Act of 1992 (12 U.S.C. 4636) is amended—

12 (1) in subsection (a), in the matter preceding  
 13 paragraph (1), by striking “or any executive officer  
 14 or” and inserting “any executive officer of an enter-  
 15 prise, any enterprise-affiliated party, or any”;

16 (2) by striking subsection (b) and inserting the  
 17 following:

18 “(b) AMOUNT OF PENALTY.—

19 “(1) FIRST TIER.—Any enterprise which, or  
 20 any enterprise-affiliated party who—

21 “(A) violates any provision of this title, the  
 22 Federal National Mortgage Association Charter  
 23 Act (12 U.S.C. 1716 et seq.), the Federal  
 24 Home Loan Mortgage Corporation Act (12  
 25 U.S.C. 1451 et seq.), or any order, condition,

1 rule, or regulation under any such title or Act,  
2 except that the Director may not enforce com-  
3 pliance with any housing goal established under  
4 subpart B of part 2 of subtitle A of this title,  
5 with section 1336 or 1337 of this title, with  
6 subsection (m) or (n) of section 309 of the Fed-  
7 eral National Mortgage Association Charter Act  
8 (12 U.S.C. 1723a(m), (n)), or with subsection  
9 (e) or (f) of section 307 of the Federal Home  
10 Loan Mortgage Corporation Act (12 U.S.C.  
11 1456(e), (f));

12 “(B) violates any final or temporary order  
13 or notice issued pursuant to this title;

14 “(C) violates any condition imposed in  
15 writing by the Director in connection with the  
16 grant of any application or other request by  
17 such enterprise;

18 “(D) violates any written agreement be-  
19 tween the enterprise and the Director; or

20 “(E) engages in any conduct the Director  
21 determines to be an unsafe or unsound practice,  
22 shall forfeit and pay a civil penalty of not more than  
23 \$10,000 for each day during which such violation  
24 continues.

1           “(2) SECOND TIER.—Notwithstanding para-  
2 graph (1)—

3           “(A) if an enterprise, or an enterprise-affiliated party—

4           “(i) commits any violation described  
5 in any subparagraph of paragraph (1);

6           “(ii) recklessly engages in an unsafe  
7 or unsound practice in conducting the af-  
8 fairs of such enterprise; or

9           “(iii) breaches any fiduciary duty; and

10          “(B) the violation, practice, or breach—

11          “(i) is part of a pattern of mis-  
12 conduct;

13          “(ii) causes or is likely to cause more  
14 than a minimal loss to such enterprise; or

15          “(iii) results in pecuniary gain or  
16 other benefit to such party,

17 the enterprise or enterprise-affiliated party shall for-  
18 feit and pay a civil penalty of not more than  
19 \$50,000 for each day during which such violation,  
20 practice, or breach continues.

21           “(3) THIRD TIER.—Notwithstanding para-  
22 graphs (1) and (2), any enterprise which, or any en-  
23 terprise-affiliated party who—

24           “(A) knowingly—

1 “(i) commits any violation described  
2 in any subparagraph of paragraph (1);

3 “(ii) engages in any unsafe or un-  
4 sound practice in conducting the affairs of  
5 such enterprise; or

6 “(iii) breaches any fiduciary duty; and

7 “(B) knowingly or recklessly causes a sub-  
8 stantial loss to such enterprise or a substantial  
9 pecuniary gain or other benefit to such party by  
10 reason of such violation, practice, or breach,

11 shall forfeit and pay a civil penalty in an amount not  
12 to exceed the applicable maximum amount deter-  
13 mined under paragraph (4) for each day during  
14 which such violation, practice, or breach continues.

15 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
16 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
17 The maximum daily amount of any civil penalty  
18 which may be assessed pursuant to paragraph (3)  
19 for any violation, practice, or breach described in  
20 such paragraph is—

21 “(A) in the case of any person other than  
22 an enterprise, an amount not to exceed  
23 \$2,000,000; and

24 “(B) in the case of any enterprise,  
25 \$2,000,000.”; and

1 (3) in subsection (d)—

2 (A) by striking “or director” each place  
3 such term appears and inserting “director, or  
4 enterprise-affiliated party”;

5 (B) by striking “request the Attorney Gen-  
6 eral of the United States to”;

7 (C) by inserting “, or the United States  
8 district court within the jurisdiction of which  
9 the headquarters of the enterprise is located,”  
10 after “District of Columbia”; and

11 (D) by striking “, or may, under the direc-  
12 tion and control of the Attorney General, bring  
13 such an action”.

14 **SEC. 156. CRIMINAL PENALTY.**

15 Subtitle C of title XIII of the Housing and Commu-  
16 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)  
17 is amended by inserting after section 1377 (as added by  
18 this Act) the following:

19 **“SEC. 1378. CRIMINAL PENALTY.**

20 “Whoever, being subject to an order in effect under  
21 section 1377, without the prior written approval of the Di-  
22 rector, knowingly participates, directly or indirectly, in any  
23 manner (including by engaging in an activity specifically  
24 prohibited in such an order) in the conduct of the affairs  
25 of any enterprise shall, notwithstanding section 3571 of

1 title 18, be fined not more than \$1,000,000, imprisoned  
 2 for not more than 5 years, or both.”.

### 3 **Subtitle D—General Provisions**

#### 4 **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

5 (a) AMENDMENTS TO 1992 ACT.—Title XIII of the  
 6 Housing and Community Development Act of 1992 (12  
 7 U.S.C. 4501 et seq.), as amended this Act, is amended—

8 (1) in section 1315 (12 U.S.C. 4515)—

9 (A) in subsection (a)—

10 (i) in the subsection heading, by strik-  
 11 ing “OFFICE PERSONNEL” and inserting  
 12 “IN GENERAL”; and

13 (ii) by striking “The” and inserting  
 14 “Subject to title II of the Federal Housing  
 15 Enterprise Oversight Modernization Act of  
 16 2003, the”;

17 (B) in subsection (d)—

18 (i) in the subsection heading, by strik-  
 19 ing “HUD” and inserting “DEPARTMENT  
 20 OF THE TREASURY”; and

21 (ii) by striking “Housing and Urban  
 22 Development” and inserting “the Depart-  
 23 ment of the Treasury”; and

24 (C) by striking subsection (f);

25 (2) in section 1319A (12 U.S.C. 4520)—



1 (A) by striking “(a) IN GENERAL.—”; and

2 (B) by striking subsection (b);

3 (3) in section 1319F (12 U.S.C. 4525), by  
4 striking paragraph (2);

5 (4) in the section heading for section 1328, by  
6 striking “**SECRETARY**” and inserting “**DIREC-**  
7 **TOR**”;

8 (5) in section 1361 (12 U.S.C. 4611)—

9 (A) in subsection (e)(1), by striking the  
10 first sentence and inserting the following: “The  
11 Director shall establish the risk-based capital  
12 test under this section by regulation.”; and

13 (B) in subsection (f), by striking “the Sec-  
14 retary,”;

15 (6) in section 1364(c) (12 U.S.C. 4614(c)), by  
16 striking the last sentence;

17 (7) in section 1367(a)(2) (12 U.S.C.  
18 4617(a)(2)), by striking “with the written concu-  
19 rence of the Secretary of the Treasury,”;

20 (8) by striking section 1383;

21 (9) by striking “Committee on Banking, Fi-  
22 nance and Urban Affairs” and inserting “Committee  
23 on Financial Services” each place such term appears  
24 in sections 1319B, 1319G(c), 1328(a),  
25 1336(b)(3)(C), 1337, and 1369(a)(3); and

1           (10) by striking “Secretary” and inserting “Di-  
2       rector” each place such term appears in—

3           (A) subpart A of part 2 of subtitle A (ex-  
4       cept in sections 1322, 1324, and 1325); and

5           (B) subtitle B (except in section  
6       1361(d)(1) and 1369E).

7           (b) AMENDMENTS TO TABLE OF CONTENTS OF  
8       1992 ACT.—Section 1(b) of the Housing and Com-  
9       munity Development Act of 1992 (12 U.S.C. 81  
10      note) is amended—

11          (1) by striking the matter relating to section  
12      1311 and inserting the following:

“Sec. 1311. Establishment of Office of Federal Housing Enterprise Super-  
vision.”;

13          (2) by striking the matter relating to section  
14      1313 and inserting the following:

“Sec. 1313. Duties and authorities of director.”;

15          (3) by inserting after the matter relating to sec-  
16      tion 1319G the following:

“Sec. 1319H. Prior approval authority for new programs.

“Sec. 1319I. Registration of stock and public disclosures.”;

17          (4) by striking the matter relating to section  
18      1319 and inserting the following:

“Sec. 1319. Review of enterprises.”;

19          (5) by striking the matter relating to section  
20      1328 and inserting the following:

“Sec. 1328. Reports by Director.”;

1           (6) by striking the heading relating to subtitle  
2           B of title XIII and inserting the following:

Subtitle B—Required Capital Levels for Enterprises, Special Enforcement  
Powers, and Nonmortgage-Related Assets”;

3           (7) by inserting after the matter relating to sec-  
4           tion 1369D the following:

“Sec. 1369E. Nonmortgage-related assets.”;

5           (8) by redesignating the matter relating to sec-  
6           tions 1377 through 1379B as sections 1379 through  
7           1379D, respectively; and

8           (9) by inserting after the matter relating to sec-  
9           tion 1376 the following:

“Sec. 1377. Removal and prohibition authority.

“Sec. 1378. Criminal penalty.”.

10          (c) AMENDMENTS TO FANNIE MAE CHARTER ACT.—  
11   The Federal National Mortgage Association Charter Act  
12   (12 U.S.C. 1716 et seq.) is amended—

13           (1) by striking “Director of the Office of Fed-  
14           eral Housing Enterprise Oversight of the Depart-  
15           ment of Housing and Urban Development” each  
16           place such term appears, and inserting “Director of  
17           the Office of Federal Housing Enterprise Super-  
18           vision of the Department of the Treasury”, in—

19                   (A)   section   303(c)(2)   (12   U.S.C.  
20                   1718(c)(2));

21                   (B)   section   309(d)(3)(B)   (12   U.S.C.  
22                   1723a(d)(3)(B)); and

1 (C) section 309(k)(1); and

2 (2) in section 309(n)—

3 (A) in paragraph (1), by inserting “the Di-  
4 rector of the Office of Federal Housing Enter-  
5 prise Supervision of the Department of the  
6 Treasury,” after “Senate,”; and

7 (B) in paragraph (3)(B), by striking “Sec-  
8 retary” and inserting “Director of the Office of  
9 Federal Housing Enterprise Supervision of the  
10 Department of the Treasury”.

11 (d) AMENDMENTS TO FREDDIE MAC ACT.—The  
12 Federal Home Loan Mortgage Corporation Act (12 U.S.C.  
13 1451 et seq.) is amended—

14 (1) by striking “Director of the Office of Fed-  
15 eral Housing Enterprise Oversight of the Depart-  
16 ment of Housing and Urban Development” each  
17 place such term appears, and inserting “Director of  
18 the Office of Federal Housing Enterprise Super-  
19 vision of the Department of the Treasury”, in—

20 (A) section 303(b)(2) (12 U.S.C.  
21 1452(b)(2));

22 (B) section 303(h)(2) (12 U.S.C.  
23 1452(h)(2)); and

24 (C) section 307(c)(1) (12 U.S.C.  
25 1456(c)(1));

1 (2) in section 306(i) (12 U.S.C. 1455(i))—

2 (A) by striking “section 1316(c)” and in-  
3 serting “section 306(c)”; and

4 (B) by striking “section 106” and insert-  
5 ing “section 1316”; and

6 (3) in section 307 (12 U.S.C. 1456)—

7 (A) in subsection (f)—

8 (i) in paragraph (1), by inserting “the  
9 Director of the Office of Federal Housing  
10 Enterprise Supervision of the Department  
11 of the Treasury,” after “Senate,”; and

12 (ii) in paragraph (3)(B), by striking  
13 “Secretary” and inserting “Director of the  
14 Office of Federal Housing Enterprise Su-  
15 pervision of the Department of the Treas-  
16 ury”.

17 (e) AMENDMENT TO TITLE 18, UNITED STATES  
18 CODE.—Section 1905 of title 18, United States Code, is  
19 amended by striking “Office of Federal Housing Enter-  
20 prise Oversight” and inserting “Office of Federal Housing  
21 Enterprise Supervision of the Department of the Treas-  
22 ury”.

23 (f) AMENDMENTS TO FLOOD DISASTER PROTECTION  
24 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
25 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))

1 is amended by striking “Director of the Office of Federal  
 2 Housing Enterprise Oversight of the Department of Hous-  
 3 ing and Urban Development” and inserting “Director of  
 4 the Office of Federal Housing Enterprise Supervision of  
 5 the Department of the Treasury”.

6 (g) AMENDMENT TO DEPARTMENT OF HOUSING AND  
 7 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
 8 ment of Housing and Urban Development Act (42 U.S.C.  
 9 3534) is amended by striking subsection (d).

10 (h) AMENDMENT TO TITLE 5, UNITED STATES  
 11 CODE.—Section 5315 of title 5, United States Code, is  
 12 amended by striking the item relating to the Director of  
 13 the Office of Federal Housing Enterprise Oversight, De-  
 14 partment of Housing and Urban Development and insert-  
 15 ing the following new item:

16 “Director of the Office of Federal Housing En-  
 17 terprise Supervision, Department of the Treasury.”.

18 **SEC. 162. EFFECTIVE DATE.**

19 Except as specifically provided otherwise in this title,  
 20 the amendments made by this title shall take effect on,  
 21 and shall apply beginning on, the expiration of the 1-year  
 22 period beginning on the date of enactment of this Act.

1 **TITLE II—TRANSFER OF FUNC-**  
2 **TIONS, PERSONNEL, AND**  
3 **PROPERTY**

4 **SEC. 201. ABOLISHMENT OF OFHEO.**

5 (a) IN GENERAL.—Effective at the end of the 1-year  
6 period beginning on the date of enactment of this Act, the  
7 Office of Federal Housing Enterprise Oversight of the De-  
8 partment of Housing and Urban Development and the po-  
9 sitions of the Director and Deputy Director of such Office  
10 are abolished.

11 (b) DISPOSITION OF AFFAIRS.—During the 1-year  
12 period beginning on the date of enactment of this Act, the  
13 Director of the Office of Federal Housing Enterprise  
14 Oversight shall, solely for the purpose of winding up the  
15 affairs of the Office of Federal Housing Enterprise Over-  
16 sight—

17 (1) manage the employees of such Office and  
18 provide for the payment of the compensation and  
19 benefits of any such employee which accrue before  
20 the effective date of any transfer of such employee  
21 pursuant to section 203; and

22 (2) may take any other action necessary for the  
23 purpose of winding up the affairs of the Office.

24 (c) STATUS OF EMPLOYEES AS FEDERAL AGENCY  
25 EMPLOYEES.—The amendments made by title I and the

1   abolishment of the Office of Federal Housing Enterprise  
2   Oversight under subsection (a) of this section may not be  
3   construed to affect the status of any employee of such Of-  
4   fice as employees of an agency of the United States for  
5   purposes of any other provision of law during any time  
6   such employee is so employed.

7       (d) USE OF PROPERTY AND SERVICES.—

8           (1) PROPERTY.—The Director of the Office of  
9   Federal Housing Enterprise Supervision of the De-  
10   partment of the Treasury may use the property of  
11   the Office of Federal Housing Enterprise Oversight  
12   to perform functions that have been transferred to  
13   the Director of the Office of Federal Housing Enter-  
14   prise Supervision for such time as is reasonable to  
15   facilitate the orderly transfer of functions under any  
16   other provision of this Act, or any amendment made  
17   by this Act to any other provision of law.

18          (2) AGENCY SERVICES.—Any agency, depart-  
19   ment, or other instrumentality of the United States,  
20   and any successor to any such agency, department,  
21   or instrumentality, which was providing supporting  
22   services to the Office of Federal Housing Enterprise  
23   Oversight before the expiration of the period under  
24   subsection (a) in connection with functions that are  
25   transferred to the Director of the Office of Federal



1       Housing Enterprise Supervision of the Department  
2       of the Treasury shall—

3               (A) continue to provide such services, on a  
4               reimbursable basis, until the transfer of such  
5               functions is complete; and

6               (B) consult with any such agency to co-  
7               ordinate and facilitate a prompt and reasonable  
8               transition.

9       (e) SAVINGS PROVISIONS.—

10           (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
11           TIONS NOT AFFECTED.—Subsection (a) shall not af-  
12           fect the validity of any right, duty, or obligation of  
13           the United States, the Director of the Office of Fed-  
14           eral Housing Enterprise Oversight, or any other per-  
15           son, which—

16               (A) arises under or pursuant to the title  
17               XIII of the Housing and Community Develop-  
18               ment Act of 1992 (12 U.S.C. 4501 et seq.), the  
19               Federal National Mortgage Association Charter  
20               Act (12 U.S.C. 1716 et seq.), the Federal  
21               Home Loan Mortgage Corporation Act (12  
22               U.S.C. 1451 et seq.), or any other provision of  
23               law applicable with respect to such Office; and

24               (B) existed on the day before the abolish-  
25               ment under subsection (a) of this section.

1           (2) CONTINUATION OF SUITS.—No action or  
 2       other proceeding commenced by or against the Di-  
 3       rector of the Office of Federal Housing Enterprise  
 4       Oversight shall abate by reason of the enactment of  
 5       this Act, except that the Director of the Office of  
 6       Federal Housing Enterprise Supervision of the De-  
 7       partment of the Treasury shall be substituted for  
 8       the Director of the Office of Federal Housing Enter-  
 9       prise Oversight as a party to any such action or pro-  
 10      ceeding.

11 **SEC. 202. CONTINUATION AND COORDINATION OF CERTAIN**  
 12 **REGULATIONS.**

13       All regulations, orders, determinations, and resolu-  
 14      tions that—

15           (1) were issued, made, prescribed, or allowed to  
 16      become effective by—

17                (A) the Office of Federal Housing Enter-  
 18      prise Oversight;

19                (B) the Secretary of Housing and Urban  
 20      Development and that relate to the Secretary's  
 21      authority under—

22                   (i) title XIII of the Housing and Com-  
 23      munity Development Act of 1992 (12  
 24      U.S.C. 4501 et seq.);

1 (ii) the Federal National Mortgage  
 2 Association Charter Act (12 U.S.C. 1716  
 3 et seq.), with respect to the Federal Na-  
 4 tional Mortgage Association; or

5 (iii) the Federal Home Loan Mort-  
 6 gage Corporation Act (12 U.S.C. 1451 et  
 7 seq.); or

8 (C) a court of competent jurisdiction and  
 9 that relate to functions transferred by this Act;  
 10 and

11 (2) are in effect on the date of the abolishment  
 12 under section 201(a) of this Act,

13 shall remain in effect according to the terms of such regu-  
 14 lations, orders, determinations, and resolutions, and shall  
 15 be enforceable by or against the Director of the Office of  
 16 Federal Housing Enterprise Supervision of the Depart-  
 17 ment of the Treasury until modified, terminated, set aside,  
 18 or superseded in accordance with applicable law by such  
 19 Board, any court of competent jurisdiction, or operation  
 20 of law.

21 **SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
 22 **OFHEO.**

23 (a) **AUTHORITY TO TRANSFER.**—The Director of the  
 24 Office of Federal Housing Enterprise Supervision of the  
 25 Department of the Treasury may transfer employees of

1 the Office of Federal Housing Enterprise Oversight to the  
 2 Office of Federal Housing Enterprise Supervision for em-  
 3 ployment no later than the date of the abolishment under  
 4 section 201(a) of this Act, as the Director considers ap-  
 5 propriate. This Act and the amendments made by this Act  
 6 shall not be considered to result in the transfer of any  
 7 function from one agency to another or the replacement  
 8 of 1 agency by another, for purposes of section 3505 of  
 9 title 5, United States Code, except to the extent that the  
 10 Director of the Office of Federal Housing Enterprise Su-  
 11 pervision specifically provides so.

12 (b) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
 13 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

14 (1) IN GENERAL.—Subject to paragraph (2), in  
 15 the case of employees occupying positions in the ex-  
 16 cepted service or the Senior Executive Service, any  
 17 appointment authority established pursuant to law  
 18 or regulations of the Office of Personnel Manage-  
 19 ment for filling such positions shall be transferred.

20 (2) DECLINE OF TRANSFER.—The Director of  
 21 the Office of Federal Housing Enterprise Super-  
 22 vision of the Department of the Treasury may de-  
 23 cline a transfer of authority under paragraph (1)  
 24 (and the employees appointed pursuant thereto) to  
 25 the extent that such authority relates to positions

1       excepted from the competitive service because of  
2       their confidential, policy-making, policy-determining,  
3       or policy-advocating character, and noncareer posi-  
4       tions in the Senior Executive Service (within the  
5       meaning of section 3132(a)(7) of title 5, United  
6       States Code).

7       (c) REORGANIZATION.—If the Director of the Office  
8       of Federal Housing Enterprise Supervision of the Depart-  
9       ment of the Treasury determines, after the end of the 1-  
10      year period beginning on the date of the abolishment  
11      under section 201(a), that a reorganization of the com-  
12      bined work force is required, that reorganization shall be  
13      deemed a major reorganization for purposes of affording  
14      affected employees retirement under section 8336(d)(2) or  
15      8414(b)(1)(B) of title 5, United States Code.

16      (d) EMPLOYEE BENEFIT PROGRAMS.—

17           (1) IN GENERAL.—Any employee of the Office  
18      of Federal Housing Enterprise Oversight accepting  
19      employment with the Director of the Office of Fed-  
20      eral Housing Enterprise Supervision of the Depart-  
21      ment of the Treasury as a result of a transfer under  
22      subsection (a) may retain for 18 months after the  
23      date such transfer occurs membership in any em-  
24      ployee benefit program of the Director of the Office  
25      of Federal Housing Enterprise Supervision of the

1 Department of the Treasury or the Office of Federal  
 2 Housing Enterprise Oversight, as applicable, includ-  
 3 ing insurance, to which such employee belongs on  
 4 the date of the abolishment under section 201(a)  
 5 if—

6 (A) the employee does not elect to give up  
 7 the benefit or membership in the program; and

8 (B) the benefit or program is continued by  
 9 the Director of the Office of Federal Housing  
 10 Enterprise Supervision.

11 (2) PAYMENT OF DIFFERENTIAL.—The dif-  
 12 ference in the costs between the benefits which  
 13 would have been provided by such agency and those  
 14 provided by this section shall be paid by the Director  
 15 of the Office of Federal Housing Enterprise Super-  
 16 vision. If any employee elects to give up membership  
 17 in a health insurance program or the health insur-  
 18 ance program is not continued by such Director, the  
 19 employee shall be permitted to select an alternate  
 20 Federal health insurance program within 30 days of  
 21 such election or notice, without regard to any other  
 22 regularly scheduled open season.

23 **SEC. 204. TRANSFER OF PROPERTY AND FACILITIES.**

24 Upon the abolishment under section 201(a), all prop-  
 25 erty of the Office of Federal Housing Enterprise Oversight

- 1 shall transfer to the Director of the Office of Federal
- 2 Housing Enterprise Supervision of the Department of the
- 3 Treasury.

